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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/598,669	06/19/2007	Christophe Boussemart	3712036-00751	8693
29157 K&L Gates LLP P.O. Box 1135 CHICAGO, IL 60690	7590 01/07/2011		EXAMINER SMITH, PRESTON	
			ART UNIT 1782	PAPER NUMBER
			NOTIFICATION DATE 01/07/2011	DELIVERY MODE ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

chicago.patents@klgates.com

Office Action Summary

Application No.

10/598,669

Applicant(s)

BOUSSEMAR ET AL.

Examiner

PRESTON SMITH

Art Unit

1782

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 December 2010.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-26 is/are pending in the application.
- 4a) Of the above claim(s) 11-25 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-10 and 26 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-940)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB-08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 1-4 rejected under 35 U.S.C. 103(a) as being unpatentable over Viennese NPL in view of K, Guenou, DE 10223444 (also see DE10223444abstract and the translation of DE10223444) and Shlomo Greenwald, US-PG Pub 2002/0130137.

Regarding claim 1, Viennese NPL teaches a recipe for making hot Viennese melting chocolate in a sauce pan, stirring in light cream, slowly adding coffee, and beating until frothy. "Stirring" is considered to be the 1st predetermined speed and

"beating" is considered to be the second predetermined speed since "beating" is faster than "stirring".

Viennese NPL fails to teach heating while stirring and the automated apparatus that is capable of performing manual process of Viennese with the claimed features.

Guenou teaches that electronic devices with a "frame", "support", and "container" that are capable of stirring at different speeds while heating are well known in the art (see Fig 2 and DE1022344abstract). It would have been obvious to one of ordinary skill to use such a device as Guenou to carry out the manual process of Viennese since machines are more favorable than manually carrying out a process since machines eliminate the need for physical exertion and save time. Additionally, it has been held that providing a mechanical or automatic means to replace manual activity which has accomplished the same result involves only routine skill in the art.

Referring to a command and control means arrange for automatically controlling heating and "driving", controls that automatically control mixing and temperature are well known in the art and further, Greenwald teaches that control systems that automatically regulate temperature and stirring for beverage systems are well known in the art (see 0075 and 0076.) It would have been obvious to one of ordinary skill to further combine this feature with the invention of Viennese in view of Guenou since this would eliminate the need for one of ordinary skill to constantly regulate these features and make producing beverages easier.

Referring to heating while stirring, it would however have been obvious to heat while stirring since the overall beverage is desired to be hot and heating throughout the

entire process would help maintain the beverage composition in a heated state. Additionally, heating while carrying out the processing steps would ensure that the melted chocolate doesn't solidify at a later stage and would make it easier to mix the components such as cream and chocolate since these components mix easier in a heated state.

Regarding claim 2, when the heating is set on a particular setting, the temperature of a liquid inside of the container will be "maintained".

Regarding claims 3-4, it would have been obvious to adjust heating setting and adjust the amount of heat supplied or the time of heating in response to the amount of liquid added since less heating will be required for less liquid and more heating would be required for more liquid to reach a desired temperature.

Claims 5-7 rejected under 35 U.S.C. 103(a) as being unpatentable over Viennese NPL in view of K, Guenou, DE 10223444 (also see DE10223444abstract and the translation of DE10223444) , Shlomo Greenwald, US-PG Pub 2002/0130137, and Stephen W. Frankel, US-Patent 6,283,625

Regarding claims 5 and 7, the references teach the invention of claim 1 however the references fail to further teach discontinuous stirring. Frankel teaches stirring wherein the impellers reverse direction after 10-40 seconds (or 0.025-0.1 Hz)

(see column 5, lines 60 - 67 and column 6, lines 1-10). It would have been obvious to carry out stirring in a similar manner with the composite invention discussed previously since this would reduce the build up of ingredients at the sides of the container due to centrifugal force and would reduce the probability of the contents coming out the side of the bowl.

Regarding claim 6, in the modification of the stirring of the composite invention further in view of Frankel, one of ordinary skill would have found applicant's claimed range obvious and discoverable through routine experimentation in light of the references. The effect of centrifugal force would be related to the viscosity of the beverage and the distribution of the materials in the beverage and from physical observation, one of ordinary skill would be able to determine the time it takes for the substances to accumulate on the sides of the bowl and would thus know to adjust the frequency in response.

Claims 8-10 rejected under 35 U.S.C. 103(a) as being unpatentable over Viennese NPL in view of K, Guenou, DE 10223444 (also see DE10223444abstract and the translation of DE10223444), Shlomo Greenwald, US-PGPub 2002/0130137, Stephen W. Frankel, US-Patent 6,283,625, Merle S. Brown, US-Patent 4,537,332, and Bruce, Langer, US-Patent 5,374,444.

Regarding claims 8-10, the references teach the invention of claim 1 however the speeds at the different stages are not known.

Brown teaches that whipping (or beating) beverages is commonly performed at 4000 rpm or more in the art (column 2, line 14). Langer teaches that stirring beverages is commonly done at 200-1000 rpm (column 14, line 3). It would have been obvious to one of ordinary skill to look to these references for common mixing and beating speeds to carry out the composite invention.

Claim 26 rejected under 35 U.S.C. 103(a) as being unpatentable over Viennese NPL.

Regarding claim 26, Viennese NPL teaches a recipe for making hot Viennese melting chocolate in a sauce pan, stirring in light cream, slowly adding coffee, and beating until frothy. "Stirring" is considered to be the 1st predetermined speed and "beating" is considered to be the second predetermined speed since "beating" is faster than "stirring". Viennese NPL fails to teach heating while stirring. It would however have been obvious to heat while stirring since the overall beverage is desired to be hot and heating throughout the entire process would help maintain the beverage composition in a heated state. Additionally, heating while carrying out the processing steps would ensure that the melted chocolate doesn't solidify at a later stage and would make it easier to mix the components such as cream and chocolate since these components mix easier in a heated state.

Response to Arguments

Applicant's arguments filed 12/02/2010 have been fully considered but they are not persuasive. The 112 rejections of the previous office action have been withdrawn in light of the claim amendments though.

Applicant argues on page 10, first paragraph that Viennese fails to teach heating while stirring. Although Viennese failed to teach heating while stirring, as pointed out in the office action previously, this step would have been obvious. It would however have been obvious to heat while stirring since the overall beverage is desired to be hot and heating throughout the entire process would help maintain the beverage composition in a heated state. Additionally, heating while carrying out the processing steps would ensure that the melted chocolate doesn't solidify at a later stage and would make it easier to mix the components such as cream and chocolate since these components mix easier in a heated state.

Applicant also argues on page 10 that Viennese fails to teach stirring a liquid using a stirring means or commanding a device using control and command means. The device of Guenou was used to teach the command and control means and the stirring means. One cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

Applicant further argues that Guenou fails to teach heating the liquid, stirring while heating, stirring with a stirring means, and a command and control device and that Guenou is manual (see page 10, 2nd paragraph). Viennese was used to teach the mixing speeds and Greenwald was used to teach the command and control means. Guenou was used to teach the stirring means. The heating while stirring was obvious for reasons mentioned above. One cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

Applicant also argues on the 3rd paragraph of page 10 that Greenwald is directed to using a controller to set a position of a valve to mix both hot and cold coffee to dispense a final coffee product and doesn't teach heating the liquid, stirring while heating, stirring with a stirring means, and a command and control device. Greenwald teaches that control systems that automatically regulate temperature and stirring for beverage systems are well known in the art (see 0075 and 0076.) It would have been obvious to one of ordinary skill to further combine this feature with the invention of Viennese in view of Guenou since this would eliminate the need for one of ordinary skill to constantly regulate these features and make producing beverages easier.

Applicant further argues that because the device of Greenwald is not configured to control heating and stirring (see page 11, 1st and 2nd paragraph). Greenwald teaches that control systems that automatically regulate temperature and stirring for beverage systems are well known in the art (see 0075 and 0076.)

The invention is simply mixing a liquid inside of a mixing device at one speed and then increasing the speed to make a foam. This is rendered obvious by the references as pointed out in the office action. The remaining arguments of pages 11 -14 are a repeat of previous points and are not persuasive for reasons presented already.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to PRESTON SMITH whose telephone number is (571)270-7084. The examiner can normally be reached on Mon-Th 6:00-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rena Dye can be reached on (571)272-3186. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Drew E Becker/
Primary Examiner, Art Unit 1782

prs